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*Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as “Freehold Walmart Supercenter”
and “Wal-Mart Real Estate Business Trust”)*

ZDENA ZELINSKY,

Plaintiff(s),

vs.

FREEHOLD WALMART SUPERCENTER;
WAL-MART REAL ESTATE BUSINESS
TRUST; AMANDA DOE, STORE
MANAGER (correct name to be supplied);
JOHN DOES 1-10 & ABC
CORPORATIONS 1-10, said names ABC,
Inc., and John Doe, being fictitious, jointly,
individually, and in the alternative
representing persons or companies
responsible for the ownership, operation,
control, maintenance, inspection, repair,
stocking and/or arranging of products of the
subject premises)

Defendant(s).

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No. 3:19-cv-01229

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Wal-Mart Stores East, LP (hereinafter “Wal-Mart Stores East” and incorrectly named as Freehold Walmart Supercenter and Wal-Mart Real Estate Business Trust), a Delaware limited partnership with its principal place of business in Bentonville, Arkansas, hereby removes the above-captioned action from the Superior Court of New Jersey, Law Division, Monmouth County, to the United States District Court for the District of New Jersey, based upon the following:

1. On or about December 20, 2018, Plaintiff Zdena Zelinsky commenced a civil action by filing a Complaint in the Superior Court of New Jersey, Law Division, Monmouth County,

entitled ZDENA ZELINSKY -vs- FREEHOLD WALMART SUPERCENTER, WAL-MART REAL ESTATE BUSINESS TRUST, AMANDA DOE, STORE MANAGER (correct name to be supplied), JOHN DOES 1-10, said names ABC, Inc., and John Doe, being fictitious, jointly, individually, and in the alternative representing persons or companies responsible for the ownership, operation, control, maintenance, inspection, repair, stocking and/or arranging of products of the subject premises), Docket No. MON-L-4539-18 (the “Complaint”).

2. On December 29, 2018, the Summons and Complaint were served on Wal-Mart Stores East.

3. December 29, 2018 was the first date on which Wal-Mart Stores East received copies of the Summons and Complaint through service or otherwise.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Complaint and Civil Case Information Statement, which constitute all process, pleadings and orders served upon Wal-Mart Stores East are attached hereto as Exhibit “A.”

5. Pursuant to 28 U.S.C. § 1446(b), this Notice is being filed with this Court within thirty (30) days of Wal-Mart Stores East’s first receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

6. This Honorable United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this is a civil action in which there is complete diversity of citizenship between Plaintiff and the Defendant, and in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, as described below.

7. Based upon the allegations in the Complaint, Plaintiff is a citizen of the State of New Jersey, residing at 46 Ford Avenue, Freehold, New Jersey.

8. Wal-Mart Stores East is a limited partnership organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas, and is not a citizen of New Jersey. The general partner of Wal-Mart Stores East is WSE Management LLC, a limited liability company organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. The limited partner of Wal-Mart Stores East is WSE Investment, LLC, a limited liability company organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. The sole member of both WSE Management LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC (formerly known as Wal-Mart Stores East, Inc.), a limited liability company organized under the laws of the State of Arkansas with its principal place of business in Bentonville, Arkansas. The sole member and parent company of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware with a principal place of business in Bentonville, Arkansas.

9. Wal-Mart Real Estate Business Trust is a Delaware corporation with its place of business located in Bentonville, Arkansas.

10. Neither Wal-Mart Stores East, Walmart Inc. nor Wal-Mart Real Estate Business Trust are citizens of the State of New Jersey.

11. Diversity of citizenship existed among the parties when the Complaint was filed on or about December 20, 2018. Diversity of citizenship still exists among the parties at the time this Notice of Removal is being filed.

12. The Complaint alleges that on or about August 5, 2018, Plaintiff Zdena Zelinsky was legally and lawfully on the premises of the Walmart store located in Freehold, New Jersey when she “slipped and fell on water.” Complaint, First Count, ¶ 1. The Complaint also alleges that defendant maintained a dangerous condition “causing the plaintiff Zedna Zelinsky to fall, on

water causing serious injury.” Complaint, First Count, ¶ 3. The Complaint also alleges that defendant was negligent and that as a direct and proximate result of that negligence, Plaintiff was “caused to sustain severe, serious and permanent injuries. Plaintiff was caused to suffer great pain and anguish; they were caused to lose time from their employment and will, in the future, be caused to lose time from their employment; they were caused to incur medical expenses and will, in the future be caused to incur medical expenses; they have been and will be in the future be disabled and prevented from attending to their necessary affairs and business.” *Id.*, ¶ 4.

13. On January 23, 2019, Wal-Mart’s counsel sent Plaintiff’s counsel correspondence requesting they stipulate that Ms. Zelinsky’s damages are less than \$75,000.00. To date, no response has been received to said request.

14. Upon information and belief, Plaintiff’s injuries include a dislocated right shoulder requiring physical therapy.

15. While Wal-Mart Stores East denies all liability to Plaintiff and denies that she is entitled to any of the relief sought by the Complaint, based upon the allegations of the Complaint and the injuries alleged, and based upon information and belief, the amount in controversy exceeds the \$75,000 jurisdictional amount under 28 U.S.C. § 1332.

16. Therefore, this civil action is removable to this Court pursuant to 28 U.S.C. §1441.

17. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being submitted for filing with the Clerk of the Superior Court, Law Division, Monmouth County and is being served upon Plaintiff.

18. In filing this Notice of Removal, Wal-Mart Stores East does not waive any defects in service of process, venue or personal jurisdiction.

19. For the foregoing reasons, this United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP
Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as “Freehold Walmart Supercenter”
and “Wal-Mart Real Estate Business Trust”)



By:

Til J. Dallavalle

Dated: January 28, 2019

LOCAL CIVIL RULE 11.2 VERIFICATION

Other than the action filed in the Superior Court of New Jersey, Law Division, Monmouth County, which is the subject of this Notice of Removal, the matter in controversy, to the best of Defendant Wal-Mart Stores East, LP's knowledge, information and belief, is not the subject of any other action pending in any court, or of any other pending arbitration or administrative proceeding.

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP
Attorneys for Defendant Wal-Mart Stores East, LP
(incorrectly named as "Freehold Walmart Supercenter"
and "Wal-Mart Real Estate Business Trust")



By: _____
Til J. Dallavalle

Dated: January 28, 2019

CERTIFICATION OF SERVICE

I hereby certify that on this date, I caused to be served via first class mail, a true and correct copy of the foregoing Notice of Removal on:

Catherine M. Carton, Esq.
Levinson Axelrod, P.A.
3641 US 9 North
Howell, New Jersey 07731
Attorneys for Plaintiff

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct.



Til J. Dallavalle

Dated: January 28, 2019